

# **WISCONSIN LEGISLATIVE COUNCIL STAFF**

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 98-013**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

The definition of “arts” in s. AB 1.02 (1) appears to go beyond the definition of “work of art” in s. 44.51 (3), Stats., which specifically refers to original creations of visual art.

#### **2. Form, Style and Placement in Administrative Code**

a. In the plain language analysis, first paragraph, there should be a space between “AB” and “2” in the fifth line of that paragraph. Further, the term “challenge” in the phrase “Arts Challenge Initiative Grants” should be capitalized.

b. The titles in the tables of contents are sometimes inconsistent with the material in the text of the rule. The tables of contents and the text of the rule should be made consistent with respect to the following titles: Subchapter I of ch. AB 1 and ss. AB 1.07, 1.10, 1.13, 1.14, 1.16, 3.04 and 4.08.

c. In s. AB 1.02 (7), a cross-reference should be included to more fully describe the “nonprofit tax-exempt requirements.”

d. In s. AB 1.02 (8), only the first letter of the first word in the defined term should be capitalized.

e. In s. AB 1.03 (1), the phrase “shall not be” should be replaced by the phrase “is not.” The entire rule should be reviewed for similar amendments. Also, in sub. (2), the phrase “Wisconsin Arts Board” should be replaced by the defined term “board.”

f. In s. AB 1.04 (2), the phrase “is eligible” should be replaced by the phrase “is an eligible applicant” for consistency with subs. (1) and (3).

g. Section AB 1.07 (5) to (14) should be restructured. Subsection (5) should be an introductory paragraph, with all of the items listed in current subs. (5) to (14) put in list form with letters from (a) to (j), to avoid repeating the phrase “where applicable” in each subsection.

h. In s. AB 1.09, the fourth sentence should be rephrased as “an incomplete or late application is not eligible for review by the peer review panel or board.” The fifth sentence may then be deleted.

i. In s. AB 1.10, the introductory paragraph should be modified to say “applications for all organizational and individual support shall not be accepted for review when funds are required for any of the following:”. This will permit the phrase “funds are requested” to be deleted from each subsection. Also, in sub. (3), the phrase “under s. AB 1.27” should be inserted after the word “requirement.”

j. In s. AB 1.15 (2), the phrase “affiliation with an application” should be replaced by the phrase “‘affiliated with an applicant’.”

k. In s. AB 1.16 (1) (intro.) and (a), the phrase “but are not limited to” and “but not limited to” may be deleted because the terms “include” and “including” expand the scope of the factors to be considered to include related examples not specifically enumerated.

l. In s. AB 1.21, subs. (3), (4) and (5) and subs. (6) and (7) can be combined into two subsections.

m. Section AB 1.23 should include an appropriate cross-reference after the phrase “notification letter.”

n. In s. AB 1.24, the word “must” should be replaced by the word “shall.” Also, the final two sentences of the section should be placed in a section of the rule describing the contents of the application form.

o. Section AB 1.26 should include an appropriate cross-reference after the phrase “notification letter.”

p. Section AB 1.29 should include an appropriate cross-reference after the phrase “the board’s established appeal process.”

q. Section AB 2.03 should have an introductory paragraph which states that “applicants shall:”. This will enable subs. (1) to (8) to be listed pars. (a) to (h) and will allow the phrase “the applicant shall” or “applicants shall” to be deleted from each of those current subsections. If this is done, then current sub. (8) which will be renumbered par. (h) should read: “For an applicant to the minority program, evidence policy, management and artistic control . . . .” In addition, current sub. (9) would be renumbered as sub. (2).

r. Section AB 2.04 (1) should include an appropriate cross-reference after the phrase “the 3 categories.”

s. In s. AB 2.06 (2), the word “Applicants” should be replaced by the phrase “Continuing applicants.”

t. In s. AB 2.13, additional material should be included that imposes a reporting requirement on participants in the program.

u. In s. AB 4.07 (2) (a) and (b), the paragraph titles should be redrafted so that only the initial letter of the first word is capitalized. In addition, the paragraph titles are underscored for drafting purposes.

v. In s. AB 4.08 (intro.) and (1), the word “advisory” should be inserted before the word “committee” and, in sub. (2), the appropriate cross-reference is to “s. 44.57 (5) (d), Stats.”

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In several places throughout the rule, the term “granting program” is used. See, for example, s. AB 1.02 (4), (10) and (12). The term should be changed to “grant program.”

b. Under s. AB 1.04 (1) (b), out-of-state organizations are permitted to be eligible applicants if they meet certain criteria, including serving the arts in the state. Why is this not a requirement for in-state organizations?

c. Under s. AB 1.04 (2), the phrase “general program revenue” is used. Is this meant to be “general purpose revenue”? If so, this reference should be changed.

d. In s. AB 1.04 (2) (c), the word “services” should be deleted and replace it with the word “activities,” for internal consistency within that paragraph.

e. In s. AB 1.04 (3), what occurs if the individual does not maintain residency in Wisconsin for the duration of the funding?

f. In s. AB 1.07 (1), the phrase “responses to” should be inserted before the word “all.” [See, also, s. AB 1.08 (1).]

g. In s. AB 1.07 (8), who are the “key” people?

h. In s. AB 1.08 (4), a “personal statement” is referred to as part of the completed application. This is a vague requirement and should be further described.

i. In s. AB 1.12, the word “panelists” should be deleted and replaced with the word “individuals.” Also, it would be helpful to define the term “minority representation” in accordance with the provisions of s. 560.036 (1) (f), Stats. [See also s. AB 2.03 (8).]

j. Section AB 1.15 (2) uses the terms “member” and “person.” The terminology should be consistent.

k. In s. AB 1.16 (1) (a), before the last phrase “the preservation of artistic heritage,” the word “or” should be inserted to improve readability.

l. In s. AB 1.16 (1) (b), the word “or” should be inserted before the last phrase “recognition and impact in the community, region, state and nation.”

m. In s. AB 1.16 (2) (a) 7., the word “short-fall” should not be hyphenated.

n. In s. AB 1.17, “artistic merit” is referred to both in the introduction and in sub. (2). It is suggested that sub. (2) is not necessary in light of the reference to artistic merit in the introductory clause. Also, in the introduction, if the standards “may” be applied, can a situation arise in which the standards will not be applied?

o. In ss. AB 1.20, 1.21 and 1.22, no references to time frames for decision-making by the Arts Board are included in notification to applicants of acceptance or rejection; time for appeal; and final action on appeal. Time frames should be inserted into these provisions.

p. In s. AB 2.05 (1), reference to “a board committee” is made. This committee is given a responsibility to review new applications. It is unclear as to what a “board committee” is, and whether they make final decisions on new applications. See, for example, s. AB 2.06 (3), which clarifies that the board is required to make final decisions on continuing applicants. The composition of the board committee should be clarified and it should be clarified as to whether the committee makes the final decision, or whether this decision is the board’s. In addition, in s. AB 2.05 (2), “the board” is required to notify each new applicant of its acceptance or rejection. Again, the rule should clarify whether the board or the “board committee” is making this notification. In addition, time frames for decision-making should be specified in this section. Finally, notification must be made in a “timely manner” under s. AB 2.05 (2). The time frame for this should be specified, as it is in s. AB 2.06 (2) for notification of continuing applicants.

q. In s. AB 2.11, a reference to “the core artistic programs” of the applicant organization is made. Further explanation as to what “core artistic programs” are should be provided.

r. In s. AB 3.06 (1), the regrating agency is required to conduct “open panel meetings.” The term “open panel meeting” should be clarified so that the regrating agency will know whether it is conforming to this requirement.

s. In s. AB 4.03, for what purpose is “all media of visual artwork” considered?

t. In s. AB 4.05 (1), an applicant is required to be a “living individual.” The reference to “living” should be deleted, since it would be difficult for a nonliving person to apply for the program. If the term “living individual” is meant to contrast a human being from a legal entity such as a corporation, the term “individual” is sufficient.

u. In s. AB 4.05 (2) (d) and (e), reference is made to the “advisory committee.” This is the first mention of advisory committees, which are required by the statute. A statutory cross-reference should be inserted here to s. 44.57 (3), Stats., or a new rule subsection should be created which further defines the advisory committee’s role.

v. In s. AB 4.06 (2), the word “must” should be replaced by the word “shall.”

w. In s. AB 4.07 (2) (b), who provides the pre-screened pool of artists?

x. In s. AB 4.08, the advisory committee is required to review the “slides” and applications submitted to the program. This is the first mention that slides are required to be submitted. If this is a requirement, it should be inserted into s. AB 4.05 (2). In addition, the second sentence should be rephrased to state something like “the advisory committee shall rank its first, second and third choices from among the applicants.” Otherwise, it appears as though the advisory committee must rank all applicants as either a first, second or third choice. Finally, in sub. (4), to what material does the phrase “archival specifications” refer?

y. Section AB 4.09 (2) provides that, following the selection of an applicant, and with the agreement of the appropriate state agency, the board must enter into one or more contracts to procure the art or artists selected for the project. Can a state agency entirely prevent the placement of art in a building by withholding its agreement? If so, the Wisconsin Arts Board should describe its authority for placing this condition on the award of a contract.